

# The Agency Phenomenon in the European Union: Emergence, Institutionalization and Everyday Decision-Making

Citation for published version (APA):

Chamon, M. (2013). The Agency Phenomenon in the European Union: Emergence, Institutionalization and Everyday Decision-Making. *Common Market Law Review*, 50(2), 653-655.

## Document status and date:

Published: 01/01/2013

## Please check the document version of this publication:

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Madalina Busuioc, Martijn Groenleer and Jarle Trondal (Eds.), *The Agency Phenomenon in the European Union: Emergence, Institutionalization and Everyday Decision-Making*. Manchester: Manchester University Press, 2012. 210 pages. ISBN: 9780719085543. GBP 65.

Apart from an introduction and an epilogue, this book has eight chapters divided between a section on agency creation and a section on everyday decision-making within agencies. A nice extra, which will be appreciated by many readers, is the index at the back covering all chapters, something which is not always included in volumes such as these. According to the editors, the book aims at exploring “the transformation that the executive branch of the government in Europe is undergoing by considering the role of agencies at the EU level” and provides a comprehensive analysis of the agency phenomenon by looking at both their creation and their de facto functioning. The first of these aims, i.e. explaining agency creation, is actually quite ambitious. Despite more than a decade of growing academic interest in the agency phenomenon at EU level, scholars have still not succeeded in deducing strong hypotheses on the rationale behind and the process of agency creation. Although different scholars have contributed to the debate by producing interesting insights, these have not been put into something which looks like a coherent and inclusive argument with sufficient explanatory and predictive power. The second aim is perhaps less ambitious but it is something which clearly brings added value to the debate on agencies. The editors correctly note that there is a sparsity of studies investigating the actual practices within agencies. Yet such studies are necessary, since an analysis confined to the regulations establishing agencies and other formal arrangements does not result in a truthful account of how agencies actually function. This said, it should be noted that the different contributions in the volume are generally written from a political science or public administration perspective. Those readers more interested in the legal aspects of agencification in the EU will probably not be completely satisfied after reading through the different contributions. Furthermore, since the volume was completed in 2011 it is only logical that it cannot comment on the recent Common Approach on Decentralized Agencies which the Commission, Council and Parliament have adopted on 12 June 2012.

A final preliminary remark concerns the reference system in the papers, for which an in-text citation style is used as is most common in political science and public administration literature. Unfortunately, some of the contributors to the volume have omitted the page numbers from their citations. This is a pity since the reader is deterred from digging deeper in the interesting material which those papers hold. The contribution by Egeberg, Martens and Trondal serves as an interesting introduction to EU agencies, their origin and role. Although the authors firmly ground their contribution in the existing (English language) literature (including the more recent literature on EU agencies), they do not attempt to define the central concept of EU agency. Instead it is assumed the reader knows more or less which bodies in the EU institutional architecture are agencies and which are not. The authors further present different accounts of agency creation, going beyond the more traditional functional narrative, although no attempt is made to include these accounts in a comprehensive model.

Martens' contribution in this volume is a study on the European Chemicals Agency (ECHA). While a previous study of this author with regard to the European Environment Agency focused on its institutionalization, the present paper traces the creation of ECHA as such, reminding us that agencies are never established *ab novo*. The case study equally shows how the decision to establish an agency is not even half the (political) issue, since that decision in itself does not say anything on how a new body may “challenge existing power structures within an institutional system”. Stated differently, what will above all be the subject of the negotiations among the Institutions is: which powers will be exercised by the new body, compared to where these powers are located in the status quo situation. Although the section on the European Parliament would have benefited from an excursion on the Parliament's stance on agencies in general, the section on the starting up of the ECHA shows how the European Medicines Agency (EMA) was used to a large extent as a template for the ECHA. Martens does not link this back to institutional practice, but any reader interested in the topic will see how this emphasizes the

need for a harmonization across agencies of certain procedures, perhaps now possible following the adoption of the Institutions' Common Approach on agencies.

Schout's contribution further builds on his earlier work on the European Aviation Safety Agency (EASA) and aims to work out a framework for assessing the added value of an agency, compared to the alternatives to agency creation. The framework he proposes offers interesting insights and shows how establishing an agency is neither a miracle solution to policy problems, nor a "logical next step" in more intense regulation at EU level. However, the framework has not been brought up to date with the new 2011 comitology regulation, which is not taken up in the assessment of comitology as an alternative to agency creation. Still, the insights gathered from studying a powerful agency such as EASA leave the reader thinking how eye-opening such an exercise could be for the more modest (e.g. non-decision-making) EU agencies.

Rijpma's account of the creation and development of Frontex is interesting already by the simple fact that it focuses on an agency in the Area of Freedom Security and Justice, rather than the traditional former first pillar agencies which are the subject of most of the EU-agency literature. From a legal perspective it is interesting to note that Rijpma focuses on the post-Lisbon means of redress against Frontex' action and the conformity of the agency's activities with the *Meroni* doctrine, although this is not analysed in depth. Rijpma adequately sketches Frontex within the broader literature on agencies and also analyses the tasks and functioning of the agency. However, the reader should be aware that Rijpma's contribution does not take into account the 2011 revision of Frontex' mandate through Regulation 1168/2011. The comments on the protection of fundamental rights and the problems Frontex faces in acquiring the necessary technical equipment from the Member States, therefore do not fully reflect the current state of play.

Gehring elaborates on his previous work with Kerler on deliberative governance and tries to explain why the EMA succeeds in this mode of governance and the European Food Safety Agency (EFSA) does not. His analysis is extremely interesting and arouses the interest for even further elaboration since, unfortunately, the comparison between the two agencies is still rather succinct. Gehring's argument depends on the existence in sectoral legislation of both a division of labour and clear "substantive decision criteria". Allegedly the latter are lacking in the EU's food and feed legislation, but they are present in the pharmaceuticals legislation. The analysis would have benefited from making this comparison more explicit, pinpointing the actual differences between the criteria found in the two bodies of sectoral legislation. For the EFSA Gehring focuses on the food additives, sweeteners and GMO authorization procedures, but the agency is involved in other authorization procedures as well (e.g. health claims), further begging the question whether the findings for the EFSA may be generalized. It is difficult for the reader to undertake this exercise himself, because Gehring does not explicitly state when "substantive decision criteria" are sufficiently clear and when they are not.

The contribution by Busuioc and Groenleer further builds on the respective authors' own research on EU agencies' autonomy and accountability. For this volume, they focus specifically on the (executive) directors of agencies. This chapter perfectly fits into the second aim of the volume. To understand the role of the agency's director, one may read the establishing regulation but the question is whether this reflects the actual functioning of an agency director. Busuioc and Groenleer complement an account of the formal arrangements with the informal arrangements as they have evolved from practice. The account of the actual functioning of agencies in this chapter is enlightening but the reader is also left wondering whether more hypotheses on the autonomy of EU agency directors could have been induced from the eight case studies. The reader might also wonder why the authors in the conclusion to their chapter wanted to link their analysis back to the heavy-handed concept of the EU's supposed democratic deficit, when this concept is absent from the main body of the contribution. Bach and Fleischer apply a principal-agent perspective to conceptualize the agencies' accountability towards the European Parliament, comparing it with the relationship between agencies and parliament at national level in the UK and Germany. The differences and similarities between these three cases are adequately set out. However, some elaboration of the section in which an attempt is made to explain these differences and similarities would enable the reader to better

follow the argument the authors try to make. The authors do point to the importance of the (at that time) ongoing debate on a Common Approach. The latter may indeed give rise to new (informal) arrangements related to parliamentary accountability. Finally because of the principal-agent perspective, the focus of the analysis in this paper is more on the strategic behaviour of the Parliament, rather than on issues of democratic accountability.

Versluis' contribution is inspired by the question of how EU agencies may improve compliance with EU law by Member States. The two main ideal types for compliance are that agencies may coerce (rational) actors into compliance by raising the costs of non-compliance or that agencies may socialize other actors who will then internalize these norms, leading to better compliance. The actual research presented in the contribution only covers a small part of this question and focuses on how one specific agency (EASA) is perceived by national actors from two Member States (Poland and Hungary). Versluis is not oblivious of the limited scope of the research presented, as she notes herself that the research will in the future have to focus on different types of Member States (old and new) and on compliance in other sectors (i.e. other agencies). Any reader will be interested to learn from the further results of this research.

The epilogue by Curtin and Dehousse provides interesting reflections on the different contributions in the volume, both linking them and placing them into their broader context. They also come back to the *Meroni* ruling and the notion of institutional balance. Unfortunately, the limited length of the epilogue prevents the authors from setting out their views on *Meroni*, the institutional balance and the relation between the two. This would have been no luxury, since a look at the doctrine shows how multi-interpretable *Meroni* and the institutional balance are.

To sum up, the editors have presented a volume which offers a comprehensive (in scope) analysis of the creation of EU agencies, which further offers unique and interesting insights on their actual functioning. The volume mainly explores the transformation of the executive branch in the EU, rather than the executive branch in Europe, since the effect of agencification on national executive branches is not really a recurring issue throughout the volume. The end result is a volume which brings a very valuable addition to the growing literature on agencies, presenting some of the varied research projects on EU agencies, projects whose future research results will surely be anticipated by the interested reader.

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